



LOUISIANA DEPARTMENT OF INSURANCE  
J. ROBERT WOOLEY, COMMISSIONER

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**DIRECTIVE 188**

**November 30, 2005**

**NOTICE TO ALL INSURERS, HMOs,  
SURPLUS LINES and any and all other ENTITIES  
DOING BUSINESS IN LOUISIANA and/or  
REGULATED BY THE COMMISSIONER OF INSURANCE  
AND THE LOUISIANA DEPARTMENT OF INSURANCE**

**RE: Interpretation and Application of Emergency Rule 19**

Following the issuance of Emergency Rule 19 on October 26, 2005, there have been numerous requests from persons affected by this action regarding the need for the Louisiana Department of Insurance ("Department") to provide some additional guidance as to how insurers, HMOs, surplus lines, any and all other entities doing business in Louisiana and/or regulated by the Commissioner and insureds should interpret and apply Emergency Rule 19. Accordingly, pursuant to these requests by the insurers, HMOs, surplus lines, any and all other entities doing business in Louisiana and/or regulated by the Commissioner and insureds, the Department hereby issues Directive 188. All affected persons are to conduct themselves in accordance with the purpose and intent of Emergency Rule 19 and are to be guided by the overriding principle that the insured is to be protected to the maximum extent possible.

In addition to the interpretation and guidance provided herein, I specifically caution all persons involved that alleged violations of Emergency Rule 19 will be the subject of investigation and potential enforcement action.

For ease of review reference will be made to both the Section numbers used in the promulgation of Emergency Rule 19 as well as the Section numbers used by the Office of the State Register in publishing Emergency Rule 19.

Accordingly, I hereby direct insurers, HMOs, surplus lines, any and all other entities doing business in Louisiana and/or regulated by the Commissioner and insureds that Emergency Rule 19 is to be interpreted and applied as follows:

1. Section 3501.A.2 relates to those persons who live outside of one of the three primary parishes, but whose place of employment was in, or whose employer had assigned said person to a business located in, one of the three primary parishes. For this type of person to avail himself or herself of the protection of Emergency Rule 19, he or she must provide some documentation to the insurer that verifies his employment in one of the three primary parishes. This documentation should be liberally construed to include, but not be limited to, a letter from the employer, payroll stubs, tax filings, security badges or other indicia of employment status in one of the three primary parishes. Unless the person presents this type of documentation to the insurer within a reasonable period of time following the issuance of Emergency Rule 19, the insurer may assume that any such person does not qualify for the protection of Emergency Rule 19 and all insurance matters between the insured and the insurer can be handled in accordance with the Louisiana Insurance Code.

2. Section 3501.A.3 relates to those persons who reside in one of the nine secondary parishes. For this type of person to avail himself or herself of the protection of Emergency Rule 19, he or she must provide some documentation to the insurer that verifies that his mail service was interrupted following Hurricane Rita. The documentation can be from the chief executive officer (or his or her designee) in the form of a statement relative to the interruption of mail service. The documentation can also be from the United States Postal Service (or a designee) in the form of a statement relative to the interruption of mail service or in the form of a letter stamped "non-deliverable" or "return to sender" or by the subsequent delivery of mail more than 30 days after the post mark date.

3. The list of insurance to which Emergency Rule 19 applies is set forth in Section 3503.A. Crop and livestock insurance is contained with this list. However, to the extent that any crop and livestock insurance is subject to an agreement between the insured and the United States Department of Agriculture (USDOA) pursuant to the federal crop loan program and subject to applicable Code of Federal Regulations provisions then this insurance falls within the jurisdictional purview of the USDOA and Emergency Rule 19 would not be applicable. Any other types of crop and livestock insurance that do not fall under the federal crop loan program are subject to Emergency Rule 19.

4. As it relates to the provisions of Section 3505.A, as amended by Section 3539.A, the protections of Emergency Rule 19 are in full force and effect until midnight on November 30, 2005 with regard to all secondary parishes. As such, an insurer can send a notice of cancellation for non-payment of premium beginning on December 1, 2005. Any notice of cancellation for non-payment of premium sent earlier than December 1, 2005 shall be null and void and cannot be used by an insurer as a legal basis to cancel a policy of insurance. Also, the protections of Emergency Rule 19 are in full force and effect until midnight on December 31, 2005 with regard to the three primary parishes of Calcasieu, Cameron and Vermilion. As such, an insurer can send a notice of cancellation for non-payment of premium beginning on January 1, 2006. Any notice of cancellation for non-payment of premium sent earlier than January 1, 2006 shall be null and void and cannot be used by an insurer as a legal basis to cancel a policy of insurance.

5. As it relates to the provisions of Section 3505.B, the following shall govern the interplay between premium finance companies and insurers whose premiums were paid in advance by a premium finance company. First, under Emergency Rule 19, only the insured can cancel a policy of insurance that has been paid for through a premium finance agreement. An insured can exercise this unilateral right of cancellation via any form of written documentation and an insured can utilize a premium finance company to effectuate a cancellation as long as the premium finance company can produce the written documentation that clearly confirms the intent of the insured to cancel a policy of insurance that was prepaid by a premium finance agreement. Second, any such written cancellation by the insured shall establish the effective date for the cancellation of the policy of insurance and also determine the effective date to be used between the insurer and the premium finance company with regard to the earned premium as well as the return of any unearned premium. Third, absent any written confirmation from the insured regarding cancellation, a policy of insurance must remain in full force and effect. Fourth, with regard to vehicle insurance, to the extent that an insured makes a claim under the policy of insurance with regard to the sole vehicle(s) of the insurance and the claim is for a "total loss" then this shall serve as a rebuttable presumption that the insured intended to give notice to cancel the policy of insurance as of the date of the claim for the "total loss" and this date shall be the date used between the insurer and the premium finance company to establish the earned premium as well as the return of any unearned premium. This presumption may be rebutted by the insured through evidence that document a contrary intent by the insured and/or the payment of any unpaid premium by the insured as verification that the insured intends to maintain the coverage.

6. The cancellation dates effective for the types of insurance covered by Emergency Rule 19 and for the parishes covered by Emergency Rule 19 are set forth in Section 3539.A of Emergency Rule 19 - Amended that was adopted by the Commissioner on November 1, 2005.

7. While an insurer is prohibited from non-renewing an insured while Emergency Rule 19 is in effect, nothing in Emergency Rule 19 shall prevent an insurer from renewing a policy of insurance since such an act would be deemed an act favorable to the insured. As such, if a policy of insurance comes up for renewal between September, 2005 and December 31, 2005 the insurer may renew the policy. Any attempt by an insurer to use the renewal process to circumvent the prohibition against cancellation or non-renewal may be the subject of a referral to the Louisiana Attorney General as an unfair trade practice. The premium for a renewed policy is still not collectible until the termination of Emergency Rule 19, and any applicable notice of cancellation period.

8. An insurer is prohibited from increasing the rate and/or premium to be paid by an insured while Emergency Rule 19 is in effect. Thus, even if the Commissioner had previously approved a rate and/or premium increase prior to August 31, 2005, said rate and/or premium increase can be levied but can not be collected against the insured until after the termination date applicable to the respective insured depending on whether he resides in a primary or secondary parish. Any attempt by an insurer to circumvent the prohibition against a rate and/or premium increase may be the subject of a referral to the Louisiana Attorney General as an unfair trade practice. Any rate and/or premium increase previously approved by the Commissioner shall not be collectible until the termination of Emergency Rule 19, and any applicable notice of cancellation period.

9. Section 3509.A is to be interpreted based on logic and fair dealing between both the insured and the insurer. On the one hand, the insured is entitled to the full protection of Emergency Rule 19 with regard to any and all things that he had insured as of September 20, 2005. Thus, the insurance that the insured had on September 20, 2005 is required to be maintained in full force and effect until Emergency Rule 19 is terminated. On the other hand, to the extent that the insured makes changes to his policy after September 20, 2005 this shall be considered "new" insurance and the insured must make full and timely payment to the insurer thereafter or be subject to cancellation for non-payment of the premium. By way of example, if an insured makes a claim for a total loss on the sole vehicle that is the subject of an insurance policy and then subsequently acquires another vehicle to be placed on the same policy, the insured should promptly pay to the insurer all premiums due under the insurance policy and continue to make timely payments thereafter. Likewise, if prior to Hurricane Rita an employer with workers compensation insurance is performing work under a specific classification code and subsequent to September 20, 2005 the employer adds new employees to the policy and/or adds new classification codes (i.e. undertakes roofing classification code work in addition to the previous carpenter classification code work) this shall be considered to be "new" insurance and the insured has taken a unilateral act that no longer entitles him to the protection of Emergency Rule 19. While other examples could be cited, the purpose and intent of Emergency Rule 19 was to ensure that the insurance coverage that the insured had on September 20, 2005 could not be cancelled. However, an insured cannot take unfair advantage of an insurer by making changes to his policy of insurance, adding new coverage, adding new classification codes or any other related or similar acts that would place the insured in the unfair position of attempting to obtain new insurance protection without the obligation of paying the premiums due under the policy.

10. Under Section 3513.A regarding the right of an insurer to "offset" the unpaid premium from any claim payment, this section is only applicable to first party claims and the insurer has no right to any such "offset" from any third party.

11. The provisions of Section 3515.A govern the subsequent cancellation of insurance for non-payment of the premium. No insurance that was in effect on September 20, 2005 can be cancelled until the termination dates set forth in Emergency Rule 19 - Amended. The protection of Emergency Rule 19 does not expire until either midnight on November 30, 2005 or midnight on December 31, 2005, depending on where the insured resides and the type of insurance. However, the insured is still entitled to receive from the insurer a written notice of cancellation for non-payment of the premium which will provide additional time to pay the late premium as per the applicable statutory grace period depending on the type of insurance. This statutory notice of cancellation for non-payment of the premium can not be sent to the insured until after the protection of Emergency Rule 19 has expired.

12. As per the specific provisions of Section 3523.A, no insurer can levy, charge, collect or recover from any insured any charge or fee due to the late payment of any insurance premium which was allowed to be paid late pursuant to Emergency Rule 19. However, if the insurance contract contains specific provisions whereby the insured previously agreed to pay a pre-set charge or interest, such as a loan against the cash value in a life insurance policy, then this pre-set charge or interest can be levied against the insured as per the contract terms.

13. There is no intent that Emergency Rule 19 be imposed upon insurance that insures property located and/or people residing outside of the state of Louisiana and/or insurance that is subject to or falls under the jurisdiction of another state or Commissioner. Based on the explanation above, there is no intent that Emergency Rule 19 be given any extra-territorial effect since to do so would place Emergency Rule 19 in a position that is juxtaposed to the laws or regulations of another state or Commissioner. However, to the extent that insureds are entitled to the protection of Emergency Rule 19 for property located and/or people residing within the state of Louisiana and/or insurance that falls under my jurisdiction, then the protections of Emergency Rule 19 shall be applied to the fullest extent possible to provide maximum protection to the insureds of Louisiana.

14. As delineated in Emergency Rule 19, the insured has the option to pay for the insurance coverage that is protected by Emergency Rule 19. To this extent, it has come to my attention that there are situations where an employer will "deduct" or "retain" from an employee funds to be used to pay for insurance coverage. Any employer who does "deduct" or "retain" any funds from an employee that have been designated for the payment of an insurance premium, holds said funds in a fiduciary capacity and must remit said funds to the insurance company immediately in order to eliminate the insured being at risk for cancellation. This is especially applicable with regard to health insurance, vehicle insurance, life insurance, disability insurance or any property and casualty insurance.

You are hereby directed to immediately bring your practice into compliance with the unequivocal purpose and intent of Emergency Rule 19. Please be governed accordingly.

Baton Rouge, Louisiana this 30th day of November 2005.

BY: 

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J. ROBERT WOOLEY  
COMMISSIONER OF INSURANCE